

# Guidance on Conducting Administrative Inquiries

## Purpose:

Administrative inquiries may be conducted for matters such as: accidents or mishaps; allegations of sexual harassment; and, incidents of misconduct which may lead to disciplinary action. The purpose of an administrative inquiry is to gather facts and relevant evidence to provide the basis for management determining what, if any, action to take. An administrative inquiry is an investigation that is not for the purpose of law enforcement or criminal prosecution.

## Performing the inquiry:

The Agency has the legal right to perform administrative inquiries based on the right to manage the workforce and the right to take discipline. It also has the right to full cooperation and truthful answers from Federal employees. The inquiry may be conducted directly by the supervisor who is responsible for any subsequent administrative action, or the supervisor may ask an HR Specialist or outside investigator to conduct the inquiry.

## Preparing for the Investigation:

- Consult with others, such as the Human Resources or General Counsel staff.
- Be familiar with the allegation and do not assume it to be true.
- Determine what evidence would be relevant , who to interview and in what order.
- Gather relevant written policy.
- Prepare open-ended, unbiased questions.
- Select a quiet private space for interviews.
- Conduct the full inquiry quickly to reach resolution and to help preclude interviewees' possible attempts to influence other witnesses (complete inquiry within two or three weeks, particularly when investigating allegations of violence and/or sexual harassment).

## Determining the Order of the Interviews:

- Usually start with the accused person/subject, due to Privacy Act concerns, especially when the results of an investigation may result in adverse action against that person.

- Next, interview the complainant/alleged victim and any witnesses. If you have some reason to believe it is not practical to begin your interviews with the subject, or you have some discomfort with doing so, you may have a basis for beginning your interviews with the complainant or witnesses. Consult with your Human Resources staff or the Office of General Counsel for advice when you are unsure.

## Conducting the Interview:

- Be aware of the rights of the person you are interviewing (see "Employee Rights" below).
- Usually, give interviewees little or no notice of the interview.
- Introduce yourself and explain the nature of the investigation.
- Explain to the employee how his/her statement may be used.
- Advise the interviewee that a written declaration/affidavit will be prepared, and he/she will receive a copy of the completed document.
- Do *not* guarantee the interviewee's of confidentiality– inform interviewees that information included in the investigation may be made public.
- Take verbatim notes.
- Ask open-ended questions that cannot be answered with a simple "yes" or "no".
- Ask questions about inconsistencies and gaps in information during the interview and/or discrepancies with previous statements.
- Probe for information the interviewee appears to be avoiding and for specific details.
- Ask if there is a way to corroborate the interviewee's account– other witnesses?
- Caution all interviewees not to discuss the investigation or their testimony with others.

## Documenting the witness statement:

- Put the interview into a first-person statement.
- Use the exact words used by the interviewee.
- Include a statement closing: "I hereby certify under penalty of perjury, in accordance with 28 USC 1746, that the following is true and correct to the best of my belief."

- Have the witness read the statement.
- Allow the witness to make changes prior to signing.
- Give the witness a copy of the final statement.
- Make sure you know how to contact the witness as needed in the future.
- Ask the witness to contact you with any new information.

## Employee Rights:

- A bargaining unit employee has the right to union representation in an investigation if he or she reasonably believes that the examination may result in discipline against the employee and the employee requests representation (i.e. Weingarten Rights).
- At this investigatory stage, the employee is *not* entitled to be informed of the charges.
- An employee does *not* have the right to legal representation unless the investigation may lead to criminal prosecution.
- If an employee reasonably believes answering an agency's investigatory questions could expose him to criminal prosecution, he can exercise his Fifth Amendment right to remain silent. An employee may be removed for not replying to the agency's questions in an investigation IF he is adequately informed he is subject to discharge for not answering AND he is told his replies cannot be used against him in a criminal case.

## Preparing a Report on Your Findings:

- Review all of the evidence and statements collected and re-interview witnesses for follow-up questions as necessary.
- Prepare your report in the following format: subject; background; list of exhibits and/or witness statements; statement of facts (each supported by one or more exhibit or witness statements); investigator's conclusions.